

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-MV/LFG

RIO CHAMA STREAM SYSTEM
Section 7, Village of Chama

M-B Ditch

MOTION BY THE STATE OF NEW MEXICO
TO REVISE SUBFILE ORDERS
ASSOCIATED WITH THE M-B DITCH

The plaintiff State of New Mexico, *ex rel.* State Engineer (“State”) moves the Court to revise all subfile orders entered in the Village of Chama subsection describing irrigation water rights under the M-B Ditch, and in support states the following:

1. OSE License 1974 granted to the water users under the M-B Ditch a license to appropriate surface water for irrigation purposes by direct diversion from both the Rio Chama and the Rio Chamita. The principal authorized diversion of the M-B Ditch uses the same point of diversion on the Rio Chama as the previously existing Chama Town Ditch. Water diverted from the Rio Chama is transported in the enlarged Chama Town Ditch to the Rio Chamita and to a second point of diversion from the Rio Chamita serving the M-B Ditch. Both the waters of the Rio Chama and the Rio Chamita are recognized as sources of water for irrigation purposes under OSE License 1974.

2. The hydrographic survey of the Village of Chama recognized the Rio Chama and the Rio Chamita as dual sources of water for irrigation use under the M-B Ditch, but failed to list or

describe the point of diversion on the Rio Chama. This error was incorporated into various subfile orders in these proceedings. *See, e.g.* Consent Order filed June 18, 2004 (Doc. 7485) (listing X and Y coordinates for point of diversion on Rio Chamita but not Rio Chama). An attempt to clarify this matter on subfile orders entered in 2007 and afterward has caused confusion, and could be interpreted to imply that there is more than a single M-B Ditch. *See, e.g.* Consent Order entered June 13, 2008 (Doc. 9213) (describing “M-B Ditch–Rio Chama” and “M-B Ditch–Rio Chamita” as sources of water and points of diversion),

3. In order to avoid possible confusion on the nature of the M-B Ditch, and the multiple points of diversion and sources of water for tracts of land irrigated by that ditch, all of the subfile orders entered in the Village of Chama subsection describing irrigation water rights under the M-B Ditch should be revised to list the source of water for tracts irrigated by the M-B Ditch and the points of diversion for the M-B Ditch, as follows:

Source of Water: Surface water of the Rio Chama and the Rio Chamita, a tributary of the Rio Chama.

Point of Diversion:

Ditch: M-B DITCH

Diversion 1: Rio Chama

Location X = 1,546,909 feet **Y** = 2,155,273 feet

Diversion 2: Rio Chamita

Location X = 1,540,798 feet **Y** = 2,149,300 feet

New Mexico Plane Coordinate System, Central Zone, NAD 1983

4. The revisions described in paragraph 3 above will also correct minor errors in the description of the Y coordinate in the point of diversion of the M-B Ditch from the Rio Chamita in

certain subfiles. *See, e.g.*, Consent Order entered June 13, 2008 (Doc. 9213) (Y coordinate incorrectly described as Y = 2,149,302).

5. Individual subfile orders describing water rights under the M-B Ditch that should be amended and revised are as follows:

CHCV-003-0001, Consent Order filed June 18, 2004 (Doc. 7485) (Porter Family Trust);

CHCV-003-0002A, Consent Order filed May 18, 2005 (Doc. 7895) (Boyd Family Revocable Trust);

CHCV-003-0002B, Consent Order filed July 29, 2004 (Doc. 7531) (Dustin Boyd);

CHCV-003-0003, Consent Order filed September 3, 2004 (Doc. 7577) (Renee Martinez);

CHCV-003-0004, Consent Order filed June 30, 2004 (Doc. 7505) (Yvonne Torrez);

CHCV-003-0005B, Consent Order filed December 10, 2007 (Doc. 9052) (Dr. Pat Hale);

CHCV-003-0006, Consent Order filed December 12, 2003 (Doc. 7342) (Johnny Rael);

CHCV-003-0007, Consent Order filed February 23, 2004 (Doc. 7411) (Jeff M. Daggett, Maxine F. Daggett);

CHCV-003-0008, Consent Order filed December 12, 2003 (Doc. 7341) (Pedro & Rose Torrez Trust);

CHCV-003-0009, Consent Order filed February 23, 2004 (Doc. 7410) (Los Campos de Chama, LLC);

CHCV-003-0010, Consent Order filed October 23, 2003 (Doc. 7305) (Vigil Family Trust);

CHCV-003-0011, Consent Order filed July 24, 2006 (Doc. 8339) (Lydia J. Garcia, Napoleon R. Garcia);

CHCV-003-0012, Order Granting Default Judgment filed March 6, 2007 (Doc. 8596) (Betty M. Martin);

CHCV-003-0013, Consent Order filed September 3, 2004 (Doc. 7576) (Charles C. Hobbs);

CHCV-003-0014, Consent Order filed March 24, 2006 (Doc. 8209) (Celine M. Brown, Orrin

G. Brown);

CHCV-003-0015, Consent Order filed December 12, 2003 (Doc. 7340) (Angie Valdez, Don Valdez);

CHCV-003-0016, Order Granting Default Judgment filed July 14, 2005 (Doc. 7948) (Julia A. Meston, Russell D. Meston);

CHCV-003-0017, Consent Order filed April 4, 2007 (Doc. 8612) (Matthew M. Gallegos, Robert Gallegos, Jr., Maria A. Martinez);

CHCV-003-0018, Consent Order filed July 29, 2004 (Doc. 7532) (Marvin R. Crane, Sandra A. Crane);

CHCV-003-0019A, Consent Order filed July 24, 2006 (Doc. 8340) (Carmen Gonzales, Florian Gonzales Jr.);

CHCV-003-0019B, Consent Order filed May 15, 2008 (Doc. 9197) (Carmen Gonzales, Florian Gonzales Jr.);

CHCV-003-0020, Consent Order filed June 30, 2004 (Doc. 7506) (June J. Overley Living Trust);

CHCV-003-0021, Consent Order filed March 24, 2006 (Doc. 8210) (Robert R. Kissam, Susan L. Windeck);

CHCV-003-0022, Order Granting Default Judgment filed March 5, 2009 (Doc. 9422) (Herman Candelaria, Puanani Kauaihilo, Michael J. Roundy);

CHCV-003-0023, Consent Order filed July 24, 2006 (Doc. 8341) (James W. McElhaney, Maxine McElhaney);

CHCV-003-0024, Consent Order filed August 12, 2005 (Doc. 7999) (Andrew Conder Jr., Cheryl Conder, Kenneth Conder, Peter J. Conder, Russell Fink);

CHCV-003-0025, Consent Order filed July 29, 2004 (Doc. 7527) (Elizabeth Ann Harris, Floyd Harris);

CHCV-003-0026, Consent Order filed March 6, 2007 (Doc. 8585) (Estate of Carlotta Valdez, Estate of Maximilo Valdez);

CHCV-003-0027A, Consent Order filed May 4, 2006 (Doc. 8276) (Michael Montaña, Peggy Montaña, Steve Montaña, Steven Montaña);

CHCV-003-0027B, Consent Order filed May 6, 2006 (Doc. 9187) (Michael Montaña, Peggy Montaña, Steve Montaña, Steven Montaña);

CHCV-003-0028, Order Granting Default Judgment filed March 6, 2007 (Doc. 8597) (Victoria L. Skrondahl);

CHCV-003-0029A, Consent Order filed December 12, 2003 (Doc. 7339) (Dan Russom, Mary Russom);

CHCV-003-0029B, Order Granting Default Judgment filed November 1, 2007 (Doc. 8981) (Andrew Hurd, Daniel Hurd);

CHCV-003-0030, Consent Order filed December 12, 2003 (Doc. 7338) (Randy Pettingill);

CHCV-003-0031, Consent Order filed June 18, 2004 (Doc. 7484) (Rosalie Ann Gonzalez)

CHCV-003-0032, Consent Order filed February 24, 2004 (Doc. 7408) (Estate of Juan Gonzales);

CHCV-003-0033, Consent Order filed February 23, 2004 (Doc. 7407) (Estate of Juan Gonzales);

CHCV-003-0034, Consent Order filed August 24, 2007 (Doc. 8767) (Estate of E. T. Reilly Sr.);

CHCV-003-0035, Consent Order filed November 18, 2004 (Doc. 7649) (Jose G. Salazar, Mary Salazar);

CHCV-003-0040, Consent Order filed May 4, 2006 (Doc. 8277) (Juanita Gonzales);

CHCV-003-0041, Consent Order filed September 3, 2008 (Doc. 9271) (Herman Candelaria);

CHCV-003-0042, Consent Order filed September 3, 2008 (Doc. 9269) (Herman Candelaria);

CHCV-003-0043, Order Granting Default Judgment filed March 5, 2009 (Doc. 9422) (Herman Candelaria, Puanani Kauaihi, Michael J. Roundy);

CHCV-004-0001, Consent Order filed May 18, 2005 (Doc. 7896) (Melvin E. Kurth Jr.);

CHCV-004-0002, Consent Order filed December 12, 2003 (Doc. 7337) (Los Campos de Chama, LLC);

CHCV-004-0003, Consent Order filed December 12, 2005 (Doc. 8085) (Melvin E. Kurth Jr.);

CHCV-004-0004B, Consent Order filed June 13, 2008 (Doc. 9213) (James A. Heath, now Chama Troutstalkers, LLC, *see* Order for substitution filed April 25, 2012 (Doc. 10812)).

WHEREFORE, the State requests the Court to enter its Order to revise all subfile orders entered in the Village of Chama subsection describing irrigation water rights under the M-B ditch as described in paragraphs 3 and 5 above. A proposed form of Order that grants this Motion is attached hereto as Exhibit 1.

Pursuant to the Court's February 4, 2013 *Order* (Doc. 10891), the State requests the Clerk of the Court to mail copies of the approved Order requested in this Motion to the *pro se* parties listed below at the address listed.

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of May, 2013, I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served by electronic mail, and served the following non-CM-ECF participants in the manner indicated:

via first class mail, postage prepaid addressed as follows:

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CHCV-003-0002B

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